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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 vs.

14 RAMON ALBERTO UBENCE-ANGULO,
JR.,

15 Defendant.

CASE NO. 01cr2805-J

Order Denying Motion for Reduction
of Sentence under Rule 35

16
17 Defendant Ramon Alberto Ubence-Angulo moves the Court under Fed. R. Crim. P. 35 for
18 an order reducing his sentence. The Court DENIES Defendant's motion.

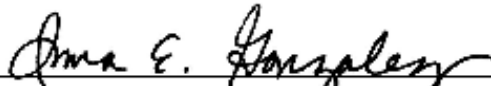
19 Defendant was convicted on several counts of possession with the intent to distribute and
20 conspiracy to distribute marijuana. On November 18, 2002, the Court sentenced Defendant to 151
21 months in custody. Defendant appealed his conviction and sentence, but the Ninth Circuit
22 affirmed. Defendant then filed a motion under 28 U.S.C. § 2255, which the Court denied.

23 Defendant now moves for reduction of his sentence under Rule 35 of the Federal Rules of
24 Criminal Procedure. Defendant asks the Court to re-examine his 151 month sentence "with a
25 conscious regard for his demonstrated capacity for change" Defendant also points to the
26 disparity between his sentence and the sentence the Court imposed upon his co-defendants.
27 Defendant does not argue the Court imposed an unlawful sentence, but instead asks the Court to
28 re-examine the sentence in the interests of justice.

1 Rule 35 does not authorize the Court to grant the relief Defendant requests. The Court may
2 reduce a defendant's sentence under Rule 35 only to correct a clear error or upon the government's
3 motion based upon defendant's substantial assistance. Fed. R. Crim. P. 35. Neither of these
4 circumstances are present in this case. In addition, although it may be appropriate in certain
5 circumstances to construe a motion under Rule 35 as a motion to correct a sentence under 28
6 U.S.C. § 2255, United States v. Eatinger, 902 F.2d 1383, 1384 (9th Cir. 1980), Defendant has
7 previously filed a motion under § 2255 and he does not argue in his current motion that his
8 sentence was unlawful. Therefore, Defendant's motion is DENIED.

9 **IT IS SO ORDERED.**

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11 **DATED: May 6, 2008**

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13 IRMA E. GONZALEZ, Chief Judge
14 United States District Court
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